him a ship which the plaintiff in turn chartered from C. The contract stipulated as liquidated damages $1,250 per day for every day's delay caused by the defendant. The ship was delayed two days because the defendant had no export license, causing the plaintiff to become indebted to the extent of $1,877. The plaintiff states causes of action in deceit and in contract. *Held,* on demurrer, two judges dissenting, that the causes of action are consistent. *France & Can. S. S. Corp.* v. *Berwind-White C. M. Co.* (N. Y. 1920) 127 N. E. 893 reversing (1920) 191 App. Div. 105, 180 N. Y. Supp. 709.

The court adopted the sound view that the actions of deceit and contract are entirely consistent because deceit does not depend on the rescission of the contract. For a fuller discussion of the principal case see (1920) 20 Columbia Law Rev. 712.

PROPERTY EXECUTION—EXAMINATION OF JUDGMENT DEBTOR AS TO UNPATENTED INVENTION.—A judgment debtor was found to have a secret unpatented invention. *Held,* that in proceedings supplementary to execution, he cannot be examined thereon under Section 2435 of the Code of Civil Procedure, providing that a judgment debtor may be examined as to his property. *Rosenthal* v. *Goldstein* (Sup. Ct. Special Term, 1920) 183 N. Y. Supp. 582.

At common law, an inventor had no exclusive right in his secret invention. See *Brown* v. *Duchesne* (1856) 60 U. S. 183, 195. A monopoly in the use thereof can be acquired only through a patent, and this may be said to create the property in the invention. *Marsh* v. *Nichols, Shepard & Co.* (1888) 128 U. S. 605, 9 Sup. Ct. 168. An inventor may undoubtedly use or sell his unpatented idea, *Ullman* v. *Thompson* (1914) 57 Ind. App. 126, 106 N. E. 611, and he will be protected against one who in violation of contract or in breach of confidence undertakes to apply it to his own use, or to disclose it to a third person. (1919) 19 Columbia Law Rev. 233; *Peabody* v. *Norfolk* (1868) 98 Mass. 452. For these reasons, such secret has often been judicially referred to as property. *Jones* v. *Reynolds* (1890) 120 N. Y. 213, 24 N. E. 279. But anyone lawfully gaining knowledge of an unpatented device may use it as he sees fit. *Hamilton Mfg. Co.* v. *Tubbs Mfg. Co.* (C. C. 1908) 216 Fed. 401. Therefore the inventor without patent lacks those rights of exclusive use which are requisite to property in its strict legal sense. *Marsh* v. *Nichols, Shepard & Co., supra.* And for jurisdictional purposes an unpatented invention is not property having an actual monetary value. *Durham* v. *Seymore* (1896) 161 U. S. 235, 16 Sup. Ct. 452. It is not property in the sense that it can be reached by creditors, nor does a trustee in bankruptcy take any interest therein. See *Gillett* v. *Bate* (1881) 86 N. Y. 87, 94; Moore, Fraudulent Conveyances & Creditors' Remedies (1908) 118, 1182. Property, being an ambiguous term, must be interpreted with regard to its context. In the Code section involved in instant case it is well to confine the use of the term to that complete aggregate of rights, powers, privileges and immunities which represents property in its strictest legal significance. Otherwise creditors would take up the time of the courts with absurd contentions as to what constituted assets of a debtor.

PUBLIC SERVICE CORPORATIONS—DISCRIMINATION—ARBITRARY REFUSAL OF CREDIT.—The relator extended credit to its other patrons but refused it to the Postal Telegraph Cable Company. The Public Service Com-

mission, acting under Section 97 of the Public Service Commission Law, giving the Commission authority to prevent unjust discrimination or undue preference, issued an order requiring the relator to extend credit to the Postal Company on intrastate messages. *Held*, two judges dissenting, the order of the Public Service Commission be reversed. *People ex rel. Western Union Tel. Co.* v. *Public Service Commission* (App. Div. 3rd Dept. 1920) 182 N. Y. Supp. 659.

At common law a carrier was privileged to extend credit to one patron and refuse it to another. See *Southern Ind. Exp. Co.* v. *United States Exp. Co.* (D. C. 1898) 88 Fed. 659, 662; see *Little Rock & M. R. R.* v. *St. Louis, S. W. Ry.* (C. C. A. 1894) 63 Fed. 775, 777. Section 3 of the Interstate Commerce Act, which forbids any undue or unreasonable prejudice or disadvantage, does not deprive carriers of this privilege. *Gamble-Robinson Com'n Co.* v. *Chicago & N. W. Ry.* (C. C. A. 1909) 168 Fed. 161; *Little Rock & M. R. R.* v. *St. Louis, S. W. Ry., supra.* The purpose or motive in making such discrimination is immaterial. *Gamble-Robinson Com'n Co.* v. *Chicago & N. W. Ry., supra.* Under Section 1 of the Elkins Act (1903) 32 Stat. 847, amended (1906) 34 Stat. 587, U. S. Comp. Stat. (1916) § 8597, arbitrary extension of credit was held unlawful. *Hocking Valley Ry.* v. *United States* (C. C. A. 1914) 210 Fed. 735. But that act prohibits "*any* discrimination" whether undue or not. Since, in respect to undue discrimination, the same rules apply to telegraph companies as to common carriers, a telegraph company may lawfully extend credit to some customers and deny it to others. *Vaugh* v. *Telephone Co.* (1910) 123 Tenn. 218, 130 S. W. 1050. The judicious extension or denial of credit is so important a factor in the management of any commercial enterprise that it seems inadvisable to deprive even quasi-public corporations of the common law privilege enjoyed by all corporations and individuals of determining for themselves to whom they will grant credit. See *Little Rock & M. R. R.* v. *St. Louis, S. W. Ry, supra.*

REAL PROPERTY—RIPARIAN RIGHTS—EQUITABLE RELIEF.—The plaintiff, a riparian owner, filled in the foreshore fronting his property, relying on a state grant subsequently declared void. The defendants, who established title to the fill, erected public bath-houses thereon, whereupon the plaintiffs prayed for an injunction and offered to restore the foreshore to its original condition. *Held*, one judge dissenting, that an injunction should issue, with leave to the defendants to accept the plaintiff's offer. *Tiffany* v. *Town of Oyster Bay et al.* (2nd Dept. 1920) 192 App. Div. 126, 182 N. Y. Supp. 738.

In the instant case, the plaintiffs originally, as riparian owners, enjoyed a right of access to the water. *Town of Brookhaven* v. *Smith* (1907) 188 N. Y. 74, 80 N. E. 665; *Rumsey et al.* v. *New York & N. E. R. R.* (1892) 133 N. Y. 79, 30 N. E. 654. No member of the public might interfere with such right of access by erecting a structure on the foreshore. *Johnson* v. *May* (1919) 189 App. Div. 196, 178 N. Y. Supp. 742. And since the defendants held title to the land below high water mark in *jus publicum* (1909) 9 Columbia Law Rev. 217, they apparently would have had no right to build such an obstruction. However, inasmuch as the fill was made by the plaintiff himself, he ceased, in fact, to be a riparian owner before he acquired any supposed rights against the town. It is difficult, therefore, to see how he can predicate his rights upon any riparian status. *Cf. Saunders et al.* v. *New York*